

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1899

IN THE MATTER OF:

Served October 4, 1978

Application of THE BALTIMORE AND)
ANNAPOLIS RAILROAD COMPANY for)
Certificate of Public Convenience)
and Necessity)
Application of THE BALTIMORE AND)
ANNAPOLIS RAILROAD COMPANY for)
Certificate of Public Convenience)
and Necessity to Perform Charter)
Operations)
Order to Show Cause Directed to)
THE BALTIMORE AND ANNAPOLIS)
RAILROAD COMPANY)

Application No. 87

Application No. 947

Docket No. 334

Docket No. 334

By application filed September 5, 1978, The Baltimore and Annapolis Railroad Company (B & A) seeks reconsideration of Order No. 1870, served August 8, 1978, which reopens Application No. 87 granting B & A 60 days to notify the Commission of its intent to prosecute said application, dismisses Application No. 947, and directs B & A to cease and desist from rendering any passenger transportation for hire between points solely within the Metropolitan District, but stays the cease and desist order for 60 days to enable B & A to renew and prosecute Application No. 87.

B & A asserts numerous errors in support of reconsideration which can be summarized as follows:

1. Order Nos. 1662, 1664, 1731 and 1870 are improper: Nos. 1662 and 1664 initially setting this matter for hearing, because they fail to comply with the Rules of the Commission and the Memorandum Order of the United States District Court for the District of Columbia Civil Action No. 76-1690; No. 1731 reopening this matter for further hearing, for reasons previously specified in a motion to vacate Order No. 1731 and disposed of by Order No. 1744, served September 1, 1977; and No. 1870 because it relies on prior Order No. 1582 which the District Court in Civil Action No. 76-1690 declined to enforce.

2. B & A's operations are not subject to the Commission's jurisdiction as was found in Order No. 366, served June 17, 1964, and there has been no change in circumstances to warrant a different finding.

3. Order No. 1870 misinterprets Title II, Article XII, Section 20 (a)(2) of the Compact and incorrectly states the scope of the Memorandum Order in Civil Action No. 76-1690.

4. Application No. 947 had been withdrawn by B & A and thus could not be dismissed by the Commission.

5. B & A's Interstate Commerce Commission Annual Reports for 1959, 1960 and 1961 are not a part of the record and could not properly be relied on in Order No. 1870.

6. Members of the Commission have not rendered any decision which would serve as a basis for Order No. 1870, reversing Order No. 366.

7. Order No. 1870 directing B & A to renew and prosecute Application No. 87 is arbitrary and capricious, and places an undue burden on B & A.

8. Order No. 1870 seeks to exercise jurisdiction over a carrier not engaged in "mass transit" operations whereas the Compact contemplates jurisdiction over carriers engaged only in "mass transit" in the Metropolitan District.

The first assertion of error by B & A is essentially a collateral attack on prior orders and is not properly before the Commission in an application to reconsider Order No. 1870. Although the United States District Court for the District of Columbia, in Washington Metropolitan Area Transit Commission v. The Baltimore and Annapolis Railroad Company, Civil Action No. 76-1690, declined to enforce Order No. 1582, the Commission followed the guidelines of the Court in setting a fact-finding hearing enabling the Commission to require B & A to show cause why it should not be directed to cease and desist from continuing to conduct operations within the Metropolitan District which are subject to the Commission's jurisdiction, and to compare B & A's present operations with those being conducted when Order No. 366 was issued. The Court's decision functioned as a guideline for the hearings but not as a strict constraint in developing the record.

As for the second contention of error, the decision in Order No. 366 specifically preserved the right of the carriers affected to prosecute the applications in the event a subsequent determination is made that the involved transportation comes within the jurisdiction of the Commission. The decision at that time was reached without benefit of a

formal hearing or fact-finding, and recent information of record based on the hearings and pleadings clearly shows that B & A is conducting transportation for hire between points in the Metropolitan District, necessitating certification from this Commission.

The remaining assertions of error, specifically attack the foundation of the decision in Order No. 1870. As pointed out above, the Memorandum Order of the Court in Civil Action No. 76-1690 remanded the proceeding to allow for development of the record, upon which the Commission could base an enforceable order. In fact the Court specifically noted that the Commission's interpretation of Title II, Section 20(a)(2) of the Compact is consistent with its legislative history. There is no evidence to support B & A's contention that Order No. 1870 misinterprets the cited Compact provision or incorrectly states the scope of the Court order.

The Commission's action in officially dismissing Application No. 947 merely recognizes B & A's expressed desire to withdraw the application. A reading of the transcript of Application No. 947, August 30, 1976, shows the request to withdraw but also indicates that the presiding officer properly did not dismiss the application. See Commission Rule No. 20-04 and Transcript pp.69-70. Moreover, we expressly reject any suggestion that a party to a proceeding before the Commission may dictate dismissal of the proceeding without leave. This Commission, in accordance with well-settled administrative and judicial precedents, controls its own docket.

With regard to the Commission's reliance on Interstate Commerce Commission Annual Reports for 1959, 1960 and 1961, they are public records and, as such, are subject to official notice. More importantly, the reports for 1960 and 1961 were officially noticed at the public hearing held September 14, 1977, Docket No. 334, page 148, and at least as to 1960 and 1961, the assertion of error is totally without foundation. Similarly, Order No. 1870 was decided by a majority of the Commission as are all orders in accordance with Title I, Article VI of the Compact and the decision of the Commission, of course, is contained within the order itself.

With respect to B & A's allegations of disparate treatment, it must be said first that there is no evidence before the Commission that the other carriers named in Order No. 336 are conducting operations solely between points in the Metropolitan District. Accordingly, there appears to be no reason either for those carriers to resume prosecution of their "grandfather" applications or for the Commission to direct cessation of any operations. Also, as mentioned above, Order No. 366 was not the result of a formal fact-finding hearing, but consolidated four separate applications for administrative convenience only. The fact that other carriers may possibly be affected by our jurisdictional conclusions in Docket No. 334

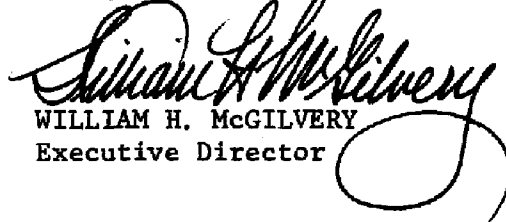
has no bearing on the cease and desist order issued to B & A. In the event any of the other three carriers are found to be conducting operations subject to our jurisdiction, appropriately consistent action will be taken.

As for B & A's final contention questioning the Commission's jurisdiction over a carrier certificated by the Interstate Commerce Commission and not engaged in "mass transit", suffice it to say that certification by the Interstate Commerce Commission has no effect on for-hire transportation ". . . of persons between any points in the Metropolitan District . . ." with certain exceptions not relevant here, without regard to "mass transit". Since it is irrelevant under the Compact whether a carrier is engaged in "mass transit", we see no need either to define this term or to determine whether B & A is engaged in it.

THEREFORE, IT IS ORDERED:

1. That the application of The Baltimore and Annapolis Railroad Company for reconsideration of Order No. 1870 is hereby denied.
2. That Order No. 1870 is hereby affirmed.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director